

ASSEMBLY BILL

No. 1261

Introduced by Assembly Member Caballero

February 23, 2007

An act to amend Section 5956.6 of the Government Code, relating to infrastructure financing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as introduced, Caballero. Infrastructure financing.

Existing law permits a governmental agency to solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and may lease to, private entities, for specified types of fee-producing infrastructure projects. Existing law permits these agreements to provide for the lease of, or ownership of, infrastructure facilities owned by a governmental entity, but constructed by a private entity, to that private entity for a period of up to 35 years.

This bill would permit the agreement to provide for the lease of the facilities to, or ownership by, the private entity for up to 40 years.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5956.6 of the Government Code is
- 2 amended to read:
- 3 5956.6. (a) For purposes of facilitating projects, the agreements
- 4 specified in Section 5956.4 may include provisions for the lease
- 5 of rights-of-way in, and airspace over, property owned by a
- 6 governmental agency, for the granting of necessary easements,

1 and for the issuance of permits or other authorizations to enable
2 the private entity to construct infrastructure facilities supplemental
3 to existing government-owned facilities. Infrastructure constructed
4 by a private entity pursuant to this chapter shall, at all times, be
5 owned by a governmental agency, unless the governmental agency,
6 in its discretion, elects to provide for ownership of the facility by
7 the private entity during the term of the agreement. The agreement
8 shall provide for the lease of those facilities to, or ownership by,
9 the private entity for up to ~~35~~ 40 years. In consideration therefor,
10 the agreement shall provide for complete reversion of the privately
11 constructed facility to the governmental agency at the expiration
12 of the lease at no charge to the governmental agency. Subsequent
13 to the expiration of the lease or ownership period, the governmental
14 agency may continue to charge fees for use of the infrastructure
15 facility. If, after the expiration of the lease or ownership period,
16 the governmental agency continues to lease airspace rights to the
17 private entity, it shall do so at fair market value.

18 (b) The agreement between the governmental agency and the
19 private entity shall include, but need not be limited to, provisions
20 to ensure the following:

21 (1) Compliance with the California Environmental Quality Act
22 (Division 13 (commencing with Section 21000) of the Public
23 Resources Code). Neither the act of selecting a proposed project
24 or a private entity, nor the execution of an agreement with a private
25 entity, shall require prior compliance with the act. However,
26 appropriate compliance with the act shall thereafter occur before
27 project development commences.

28 (2) Security for the construction of the facility to ensure its
29 completion, and contractual provisions that are necessary to protect
30 the revenue streams of the project.

31 (3) Adequate financial resources of the private entity to design,
32 build, and operate the facility, after the date of the agreement.

33 (4) Authority for the governmental agency to impose user fees
34 for use of the facility in an amount sufficient to protect the revenue
35 streams necessary for projects or facilities undertaken pursuant to
36 this chapter. User fee revenues shall be dedicated exclusively to
37 payment of the private entity's direct and indirect capital outlay
38 costs for the project, direct and indirect costs associated with
39 operations, direct and indirect user fee collection costs, direct and
40 indirect costs of administration of the facility, reimbursement for

1 the direct and indirect costs of maintenance, and a negotiated
2 reasonable return on investment to the private entity.

3 (5) As a precondition to the imposition or increase of a user fee,
4 the governmental agency shall conduct at least one public hearing
5 at which public testimony will be received regarding a proposed
6 user fee revenue or increase in user fee revenues. The public
7 hearing shall precede the action by the governmental agency to
8 actually impose a user fee or to increase an existing user fee. The
9 governmental agency shall consider the public testimony prior to
10 imposing a new or increased user fee. The governmental agency
11 shall provide the following notices and utilize the following
12 procedures:

13 (A) Notice of the date, time, and place of the meeting, including
14 a general explanation of the matter to be considered, shall be mailed
15 at least 14 days prior to the meeting to any interested party who
16 files a written request with the governmental agency for mailed
17 notice of the meeting on new or increased fees or service charges.
18 Any written request for mailed notices shall be valid for one year
19 from the date on which it is filed unless a renewal request is filed
20 prior to the expiration of the one-year period for which the written
21 request was filed. The legislative body may establish a reasonable
22 annual charge for sending notices based on the estimated cost of
23 providing the service.

24 (B) At least 10 days prior to the meeting, the governmental
25 agency shall make available to the public data that supports the
26 amount of the fee or the increase in the fee.

27 (C) (i) At least 10 days prior to the meeting, the governmental
28 agency shall publish a notice in a newspaper of general circulation
29 in that agency's jurisdiction stating the date, time, and place of the
30 meeting, including a general explanation of the matter to be
31 considered.

32 (ii) Any costs incurred by the governmental agency in
33 conducting the meeting or meetings required by this section may
34 be recovered from fees charged for the services that are the subject
35 of the fee.

36 (iii) For transportation projects specifically authorized by this
37 chapter, at least 10 days prior to the meeting, the governmental
38 agency shall publish for four consecutive times, a notice in the
39 newspaper of general circulation in the affected area stating in no
40 smaller than 10-point type a notice specifying the subject of the

1 hearing, the date, time, and place of the meeting, and in at least
2 8-point type a general explanation of the matter to be considered.

3 (D) No local agency shall levy a new fee or service charge or
4 increase an existing fee or service charge to an amount that exceeds
5 the estimated amount required to provide the service for which the
6 fee or service charge is levied and a reasonable rate of return on
7 investment, pursuant to paragraph (4). Any action by a local agency
8 to levy a new fee or service charge or to approve an increase in an
9 existing fee or service charge pursuant to this chapter shall be taken
10 only by ordinance or resolution. The legislative body of a local
11 agency shall not delegate the authority to adopt a new fee or service
12 charge, or to increase a fee or service charge.

13 (6) Require that if the legislative body of the governmental
14 agency determines that fees or service charges create revenues in
15 excess of the actual cost for which the user fee revenues are
16 dedicated and a reasonable rate of return on investment, pursuant
17 to paragraph (4), those revenues shall either be applied to any
18 indebtedness incurred by the private entity with respect to the
19 project, be paid into a reserve account in order to offset future
20 operation costs, be paid into the appropriate government account,
21 be used to reduce the user fee or service charge creating the excess,
22 or a combination of these sources.

23 (7) Require the private entity to maintain the facility in good
24 operating condition at all times, including the time the facility
25 reverts to the governmental agency.

26 (8) Preparation by the private entity of an annual audited report
27 accounting for the income received and expenses to operate the
28 facility. The private entity shall make that report available to any
29 member of the public for a cost not to exceed the cost of
30 reproduction of the report.

31 (9) Provision for a buyout of the private entity by the
32 governmental entity in the event of termination or default before
33 the end of the lease term.

34 (10) Provision for appropriate indemnity promises between the
35 governmental agency and the private entity.

36 (11) Provision requiring the private entity to maintain insurance
37 with those coverages and in those amounts that the governmental
38 agency deems appropriate.

1 (12) In the event of a dispute between the governmental agency
2 and the private entity, both parties shall be entitled to all available
3 legal or equitable remedies.

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